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10/566,729	02/02/2006	Jorn Oddershede Thomsen	2081-0146PUS1	2172
2292 7590 04/07/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
DAVIS, RUTH A				
ART UNIT		PAPER NUMBER		
1651				
NOTIFICATION DATE		DELIVERY MODE		
04/07/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/566,729

Applicant(s)

THOMSEN, JORN ODDERSHEDE

Examiner

Ruth A. Davis

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)
Paper No(s)/Mail Date 2.5/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and its dependents are drawn to a composition, however are rendered vague and indefinite for reciting "accessory agents" as the term is not adequately defined by the claim language or specification.

Claims 8 – 10 and 13 – 20 are rendered indefinite for reciting "preferably" because is it unclear if the limitations that follow are (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note, that a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd.

App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

Claims 11 and 12 provide for the use of a composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 12 is further confusing for reciting “puppy disease”, “three day sickness” and “sticky kits in mink”, as the phrases are not adequately defined by the claim language or specification.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell et al. (US 6582713) and Drinkwater et al. (WO 99/13891).

Newell teaches compositions for treating wounds (abstract) wherein the composition comprises biologically active elemental silver (abstract). Newell teaches the silver may be colloidal (col.3 line 62—col.4 line 9).

Drinkwater teaches compositions for treating wounds wherein the composition comprises shark cartilage (abstract) that may be dried powder (p.2), and zinc salts (p.8).

The references do not teach a single composition comprising each of the claimed components. However, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit, as disclosed by the cited references above, since each is well known in the art for the same purpose of healing wounds. Although the references do not teach the claimed amounts, it would have been well within the purview of one in the art to optimize the amounts as a matter of routine experimentation, since each of the instant components were recognized to be active ingredients, or result effective variables. It is noted that while the cited references do not teach the claimed hepar sulphuris or tare powder these limitations are listed in the alternative (i.e. claim 3) and are therefore not required components of the instant claims. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated to combine the instant components and optimize the amounts with a reasonable expectation for successfully obtaining an effective composition for treating wounds.

This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518.

The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

5. Claims 1 – 4 and 6 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell, Drinkwater and JT Smith (1846).

Newell teaches compositions for treating wounds (abstract) wherein the composition comprises biologically active elemental silver (abstract). Newell teaches the silver may be colloidal (col.3 line 62—col.4 line 9).

Drinkwater teaches compositions for treating wounds wherein the composition comprises shark cartilage (abstract) that may be dried powder (p.2), and zinc salts (p.8).

JT Smith teaches compositions of hepar sulphuris for treating wounds (p.276).

The references do not teach a single composition comprising each of the claimed components. However, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit, as disclosed by the cited references above, since each is well known in the art for the same purpose of healing wounds. Although the references do not teach the claimed amounts, it would have been well within the purview of one in the art to optimize the amounts as a matter of routine experimentation, since each of the instant components were recognized to be active ingredients, or result effective variables. It is noted that while the cited references do not teach the claimed tare powder, this limitation is listed in the alternative (i.e. claim 3) and are therefore not required components of the instant claims. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated to combine the instant components and

optimize the amounts with a reasonable expectation for successfully obtaining an effective composition for treating wounds.

This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518.

The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

6. Claims 1 – 3 and 5 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell, Drinkwater and Pearson et al. (US 6528040) as evidenced by Aquaron et al. (2002).

Newell teaches compositions for treating wounds (abstract) wherein the composition comprises biologically active elemental silver (abstract). Newell teaches the silver may be colloidal (col.3 line 62—col.4 line 9).

Drinkwater teaches compositions for treating wounds wherein the composition comprises shark cartilage (abstract) that may be dried powder (p.2), and zinc salts (p.8).

Pearson teaches compositions for treating wounds (abstract) wherein the composition comprises iodine (col.3 line 20-40).

The references do not teach a single composition comprising each of the claimed components. However, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit, as disclosed by the cited references above, since each is well known in the art for the same purpose of healing wounds. Although the references do not teach the claimed amounts, it would have been well within the purview of one in the art to optimize the amounts as a matter of routine experimentation, since each of the instant components were recognized to be active ingredients, or result effective variables. It is noted that while the cited references do not teach the claimed hepar sulphuris, this limitation is listed in the alternative (i.e. claim 3) and are therefore not required components of the instant claims. Further, although Pearson does not teach the iodine in the form of tare powder, tare powder was a well known source of iodine at the time the claimed invention was made. In support, Aquaron teaches Laminaria (the source of tare powder) as a suitable source of bioavailable iodine (abstract). Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated to combine the instant components and optimize the amounts with a reasonable expectation for successfully obtaining an effective composition for treating wounds.

This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518.

The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA

1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-F 7:00 -3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ruth A. Davis/
Primary Examiner, Art Unit 1651

March 31, 2008